



## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

**[Prohibited Transaction Exemption 2022–01; Exemption Application No. D-12065]**

### **Exemption for Certain Prohibited Transaction Restrictions Involving Credit Suisse Group AG (CSG or the Applicant), Located in Zurich, Switzerland**

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Notice of exemption.

**SUMMARY:** This document is a notice of exemption issued by the Department of Labor (the “Department”) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (“ERISA”) and the Internal Revenue Code of 1986 (the “Code”). The exemption allows entities with specified relationships to Credit Suisse AG (“CSAG”) and Credit Suisse Securities (Europe) Limited (“CSSEL”) to continue to rely on the exemptive relief provided by Prohibited Transaction Class Exemption 84-14, notwithstanding the judgments of conviction against CSAG and CSSEL, described below.

**DATES:** The exemption will be in effect for one year beginning on the date of conviction of Credit Suisse Securities (Europe) Limited in Case Number 1:21-cr-00520-WFK.

**FOR FURTHER INFORMATION CONTACT:** Erin Scott Hesse of the Department at (202) 693-8546. (This is not a toll-free number.)

### **SUPPLEMENTARY INFORMATION:**

On January 10, 2022, the Department published a notice of proposed exemption in the *Federal Register*<sup>1</sup> for certain qualified professional asset managers within the corporate family of Credit Suisse Group AG (“CSG”), to continue relying on the class exemptive

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<sup>1</sup> 87 FR 1186 (Jan. 10, 2022).

relief granted in Prohibited Transaction Exemption (PTE) 84-14 (“PTE 84-14”), for up to one year, notwithstanding the judgment of conviction against Credit Suisse AG (“CSAG”) and upcoming judgment of conviction against Credit Suisse Securities (Europe) Limited (“CSSEL”). The Department is granting this exemption to ensure that Covered Plans and their participants and beneficiaries are protected while the Department determines whether additional relief is warranted.<sup>2</sup>

The Department stresses that this exemption provides Covered Plans and CS Affiliated QPAMs with the ability to rely on PTE 84-14 for one year and that this exemption will terminate at the end of that period. The grant of this one-year exemption does not imply that the Department will grant additional relief for the CS Affiliated QPAMs to continue to rely on the relief in PTE 84-14 beyond the end of this exemption's one-year term. The Convictions and other alleged Credit Suisse-related criminal misconduct constitute serious years-long systemic criminal misconduct that counsels against providing broad relief from ERISA’s prohibited transaction provisions and raises fundamental questions regarding whether the CS Affiliated QPAMs have sufficient integrity to warrant their continued reliance on PTE 84-14.

This exemption provides only the relief specified in the text of the exemption, and only with respect to the criminal convictions or criminal conduct described herein. It provides no relief from violations of any law other than the prohibited transaction provisions of Title I of ERISA and the Code.

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<sup>2</sup> For purposes of this exemption, a “Covered Plan” is a plan subject to Part IV of Title I of ERISA (an “ERISA-covered plan”) or a plan subject to Code section 4975 (an “IRA”), in each case, with respect to which a CS Affiliated QPAM relies on PTE 84-14, or with respect to which a CS Affiliated QPAM (or any CSAG affiliate) has expressly represented that the manager qualifies as a QPAM or relies on PTE 84-14. A Covered Plan does not include an ERISA-covered plan or IRA to the extent the CS Affiliated QPAM has expressly disclaimed reliance on QPAM status or PTE 84-14 in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA. Notwithstanding the above, a CS Affiliated QPAM may disclaim reliance on QPAM status or PTE 84-14 in a written modification of a contract, arrangement, or agreement with an ERISA-covered plan or IRA, where: the modification is made in a bilateral document signed by the client; the client's attention is specifically directed toward the disclaimer; and the client is advised in writing that, with respect to any transaction involving the client's assets, the CS Affiliated QPAM will not represent that it is a QPAM, and will not rely on the relief described in PTE 84-14.

The Department intends for the terms of this exemption to promote adherence by the CS Affiliated QPAMs to basic fiduciary standards under Title I of ERISA and the Code. The Department's primary objective in granting this exemption is to ensure that Covered Plans can terminate their relationships with a CS Affiliated QPAM in an orderly and cost-effective fashion in the event the fiduciary of a Covered Plan determines it is prudent to do so. The Department makes the requisite findings under ERISA section 408(a) and Code Section 4975(c)(2) based on the Applicant's adherence to all the conditions of the exemption. Accordingly, affected parties should be aware that the conditions incorporated in this exemption are, taken as a whole, necessary for the Department to grant the relief requested by the Applicant. Absent these or similar conditions, the Department would not have granted this exemption.

The Applicant requested an individual exemption pursuant to ERISA section 408(a) and Code section 4975(c)(2), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011). Effective December 31, 1978, section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. app. 1 (1996), transferred the authority of the Secretary of the Treasury to issue administrative exemptions under Code section 4975(c)(2) to the Secretary of Labor. Accordingly, the Department grants this exemption under its sole authority.

### ***Written Comments***

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption (the "Proposal"). In this regard, the Applicant was given ten (10) days to provide notice to interested persons, and all comments and requests for a hearing were due on February 22, 2022. The Department received two written comments and no hearing requests. One comment was from the Applicant, as discussed in more detail below. The other comment was from Senators Elizabeth Warren and Tina Smith urging the Department to reconsider

and rescind the Proposal. After considering the entire record developed in connection with the Applicant's exemption request, the Department has determined to grant the one-year exemption to ensure that affected plans and their participants are protected, as described below.

***Department's Comment***

The Department cautions that the relief in this exemption will terminate immediately if an entity within the CSG corporate structure is convicted of a crime described in Section I(g) of PTE 84-14 (other than the judgment of conviction against CSAG and upcoming judgment of conviction against CSSEL, as further defined below) during the Exemption Period. Although the CS Affiliated and Related QPAMs could apply for a new exemption in that circumstance, the Department would not be obligated to grant the exemption. The Department designed the terms of this exemption to permit plans to terminate their relationships in an orderly and cost-effective fashion. Nothing in this exemption should be construed to suggest that the Department will grant further relief after the expiration of this one-year exemption. In this regard, the CS Affiliated QPAMs must manage the assets of Covered Plan clients consistent with this understanding and in accordance with their fiduciary obligations under ERISA and the conditions of this one-year exemption. The Department stresses that complying with their fiduciary obligations means that the CS Affiliated QPAMs' should advise their plan and IRA clients to prepare for the possibility that the Department will not grant further relief at the end of the one-year period and the ensuing consequences. This also means that the QPAMs should take the necessary and appropriate steps to ensure their Covered Plan clients will not be exposed to prohibited transactions and that the QPAMs have prudent processes in place to comply with the penalty-free withdrawal and indemnification requirements set forth in Section I(j) of PTE 2019-07 and Section III(j) of this exemption.

Below, the Department provides the overview of the relevant convictions, which was published in the Department's notice of proposed exemption.<sup>3</sup>

*Prior 2014 Conviction of CSAG (the CSAG Conviction) and Related Exemptions*

*The CSAG Conviction*

On May 19, 2014, the Tax Division of the United States Department of Justice (DOJ) and the U.S. Attorney's Office for the Eastern District of Virginia filed a one-count criminal information (the CSAG Information) in the District Court for the Eastern District of Virginia (the Virginia District Court) charging CSAG with a conspiracy to violate Code section 7206(2) in violation of Title 18, United States Code, Section 371. The CSAG Information charged the Applicant and its subsidiaries, Credit Suisse Fides and Clariden Leu Ltd., with willfully aiding, assisting in, procuring, counseling, and advising the preparation and presentation of false income tax returns and other documents to the Internal Revenue Service of the Treasury Department (IRS), for decades, prior to and through approximately 2009.

According to the Statement of Facts filed in the criminal case (the CSAG Statement of Facts), for decades before and through approximately 2009, CSAG operated an illegal cross-border banking business that knowingly and willfully aided and assisted thousands of U.S. clients in opening and maintaining undeclared accounts concealing their offshore assets and income from the IRS. Private bankers employed by CSAG (referred to as Relationship Managers or RMs) served as the primary contact for U.S. clients with undeclared accounts at CSAG. CSAG used a variety of means to assist U.S. clients in concealing their undeclared accounts, including by: assisting clients in using sham entities as nominee beneficial owners of the undeclared accounts; soliciting IRS forms that falsely stated under penalty of perjury that the sham entities beneficially owned the assets in the accounts; failing to maintain records in the United States related

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<sup>3</sup> 87 FR 1186 (Jan. 10, 2022).

to the accounts; destroying account records sent to the United States for client review; using Credit Suisse<sup>4</sup> managers and employees as unregistered investment advisors on undeclared accounts; facilitating withdrawals of funds from undeclared accounts by either providing hand-delivered cash in the United States or using Credit Suisse's correspondent bank accounts in the United States; structuring transfers of funds to evade currency transaction reporting requirements; and providing offshore credit and debit cards to repatriate funds in the undeclared accounts.

CSAG made a number of ineffectual attempts to consolidate these U.S. clients' accounts in CSAG business entities that complied with U.S. law. For instance, starting in or about 2009, CSAG engaged in a flawed process of verifying tax compliance of U.S. accounts in order to allow these accounts to remain at CSAG. In December 2010, the Tax Division of the U.S. Department of Justice (DOJ) informed Credit Suisse AG that it had begun a criminal investigation of CSAG that had uncovered evidence of tax law violations. Although CSAG had either transferred or terminated the majority of its relationships with these U.S. clients by approximately 2010, CSAG continued to identify U.S. customer accounts for closure until on or about 2013.

On May 19, 2014, pursuant to a plea agreement (the CSAG Plea Agreement), CSAG entered a plea of guilty for assisting U.S. citizens in federal income tax evasion. The conviction (the CSAG Conviction) occurred on November 21, 2014.

#### *Related Individual Exemptions*

In connection with the CSAG Conviction, the Department first granted PTE 2014-11,<sup>5</sup> a one-year exemption that allowed CS Affiliated and Related QPAMs to continue to rely on PTE 84-14, notwithstanding the CSAG Conviction, as long as a number of conditions were met. Subsequent to granting PTE 2014-11, the Department granted PTE

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<sup>4</sup> The CSAG Statement of Facts defined "Credit Suisse" to mean CSAG, its parent, and Switzerland-based subsidiaries and affiliates, including Clariden Leu.

<sup>5</sup> 79 FR 68716 (Nov. 18, 2014).

2015-14, an additional four-year exemption that continued to provide extended relief for CS Affiliated QPAMs.<sup>6</sup> Before the expiration of PTE 2015-14, the Department granted PTE 2019-07, which would have provided the final five-years of relief CS Affiliated needed in connection with the CSAG Conviction.<sup>7</sup>

*Impending Conviction of CSSEL (the CSSEL Conviction) and CSG Deferred Prosecution Agreement (DPA)*

*The CSSEL Conviction*

On October 19, 2021, the DOJ, Criminal Division, Money Laundering and Asset Recovery Section and Fraud Section, and the United States Attorney's Office for the Eastern District of New York (collectively, the Offices), filed a criminal information (the CSSEL Information) in the District Court for the Eastern District of New York (the New York District Court) charging CSSEL with one count of conspiracy to commit wire fraud in violation of 18 U.S.C. 1349. As of the date of this publication, the CSSEL sentencing date is scheduled for May 13, 2022.

CSSEL agreed to resolve the action through a plea agreement presented to the New York District Court on October 19, 2021 (the CSSEL Plea Agreement). Under the CSSEL Plea Agreement, CSSEL agreed to enter a plea of guilty to the charge set out in the CSSEL Information (the CSSEL Plea). In addition, CSSEL will make an admission of guilt to the District Court. The Applicant expects that the District Court will enter a judgment against CSSEL that will require remedies that are materially the same as those set forth in the CSSEL Plea Agreement. On October 19, 2021, in connection with the CSSEL Plea, the ultimate parent of CSSEL, CSG, entered into a Deferred Prosecution Agreement (the DPA) with the Criminal Division, Money Laundering and Asset

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<sup>6</sup> 80 FR 59817 (Oct. 2, 2015). PTE 2015-14 provided relief to the CS Related QPAMs for the entire remainder of the ineligibility period.

<sup>7</sup> See 84 FR 61928 (Nov. 14, 2019).

Recovery Section and Fraud Section of the DOJ and the United States Attorney's Office for the Eastern District of New York.

For purposes of Section I(g) of PTE 84-14, the date CSSEL is sentenced will be the conviction date (the CSSEL Conviction Date). As of that date, absent this exemption, the CS Affiliated and Related QPAMs will no longer be able to rely on the relief provided by PTE 84-14 as of the CSSEL Conviction Date. The CSSEL Conviction will also violate PTE 2019-07 and therefore, absent this exemption, the CS Affiliated and Related QPAMs will no longer be able to rely on the relief provided by either PTE 84-14 or PTE 2019-07 as of the CSSEL Conviction Date.

According to the Statement of Facts (the CSSEL Statement of Facts)<sup>8</sup> that accompanied the CSSEL Plea Agreement,<sup>9</sup> CSSEL acted as a Joint Lead Manager underwriting the issuance of \$500 million in loan participation notes (LPNs) to partially finance an \$850 million loan for a tuna fishing project in Mozambique in 2013, and acted as Joint Dealer Manager in the exchange of those LPNs for a sovereign bond (EMATUM<sup>10</sup> Exchange) (collectively, the EMATUM Securities) in 2016.

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<sup>8</sup> Unless otherwise specified, all information in this section is taken from the Applicant's exemption application and supporting documents, the CSSEL Plea Agreement, and the CSSEL Statement of Facts. According to the CSSEL Plea Agreement "[t]he Defendant is pleading guilty because it is guilty of the charge contained in the Information. The Defendant admits, agrees, and stipulates that the factual allegations set forth in the Information and the Statement of Facts are true and correct, that it is responsible for the acts of its officers, directors, employees, and agents described in the Information and the Statement of Facts, and that the Information and the Statement of Facts accurately reflect the Defendant's criminal conduct." P. 11. Additionally, as part of the CSSEL Plea Agreement, the Defendant "expressly agrees that it shall not, through present or future attorneys, officers, directors, employees, agents or any other person authorized to speak for the Defendant make any public statement, in litigation or otherwise, contradicting the acceptance of responsibility by the Defendant set forth above or the facts described in the Information and the Statement of Facts." P. 23.

<sup>9</sup> Plea Agreement entered into between the United States of America, by and through the United States Department of Justice, Criminal Division, Money Laundering and Asset Recovery Section and Fraud Section, and the United States Attorney's Office for the Eastern District of New York and Credit Suisse Securities (Europe) Limited, Cr. No. 21-520 (MKB), filed Oct. 19, 2021.

<sup>10</sup> EMATUM was a company owned, controlled, and overseen by the Government of Mozambique. EMATUM was created to undertake a project to create a state-owned tuna fishing company for Mozambique.



CSSEL, through its employees, conspired to use U.S. wires and the U.S. financial system to defraud U.S. and international investors. Credit Suisse<sup>11</sup> and its co-conspirators conspired to use international and interstate wires to, from, and through the United States to transmit false and misleading statements to investors in the EMATUM Securities, transfer proceeds obtained from those investors through the fraudulent scheme to the co-conspirators, and pay kickbacks to three former Credit Suisse bankers.

CSSEL, through Surjan Singh (Singh), who left Credit Suisse in 2017, and Andrew Pearce (Pearse) and Detelina Subeva (Subeva), who both left Credit Suisse in 2013, among other things, conspired to defraud investors and potential investors in the EMATUM Securities by concealing and misrepresenting the fact that approximately \$50 million in kickbacks were paid to Pearce, Singh, and Subeva from the loan proceeds of the EMATUM LPN transaction. Jean Boustani, an agent of Privinvest,<sup>12</sup> an entity not affiliated with Credit Suisse, paid bribes totaling approximately \$150 million to various Mozambican government officials and others, including Manuel Chang, Mozambique's Minister of Finance, and Antonio do Rosario, an official in Mozambique's governmental state intelligence and security service, known as Servico de Informacoes e Seguranca do Estado, which, together with other Mozambican government agencies, was an owner of ProIndicus<sup>13</sup> and EMATUM.

Credit Suisse also arranged the EMATUM Exchange, whereby, in 2015, when EMATUM began encountering problems servicing the EMATUM loans, Credit Suisse arranged for the LPNs to be exchanged for Mozambique-issued Eurobonds. According to the Statement of Facts, in seeking investors' consent to the EMATUM Exchange,

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<sup>11</sup> The CSSEL Statement of facts defined "Credit Suisse" to mean CSG together with its wholly-owned subsidiaries and affiliated entities.

<sup>12</sup> Privinvest was a holding company based in Abu Dhabi, United Arab Emirates. Privinvest was engaged in shipbuilding of various types of vessels.

<sup>13</sup> ProIndicus was a company owned, controlled, and overseen by the Government of Mozambique. ProIndicus was created to undertake a project to create a state-owned coastal surveillance and protection plan for Mozambique.

CSSEL prepared documents about the EMATUM Exchange that were sent to investors and included false and misleading statements regarding the use of proceeds of the original EMATUM loan and omitted certain other facts concerning the EMATUM Exchange. Credit Suisse ignored or only nominally addressed a number of red flags in connection with these transactions.

On or about August 30, 2013, Credit Suisse agreed to move forward with the EMATUM transaction. In addition to Credit Risk Management, the European Investment Banking Committee, Reputational Risk, and the Compliance and Anti-Money Laundering functions considered the transaction and agreed to allow the EMATUM transaction to go forward. The CSSEL Statement of Facts indicates that after Credit Suisse transferred the funds raised to finance EMATUM to Privinvest, Privinvest secretly paid millions of dollars to three of the signatories on the EMATUM deal—Singh, Do Rosario, and Chang.

Credit Suisse approved the EMATUM loan notwithstanding the fact that its earlier due diligence process for ProIndicus had identified significant risks of bribery and the size of the project had expanded greatly without apparent justification, and Credit Suisse, through Pearse, Singh, and Subeva, knew that Privinvest had paid kickbacks to Pearse in connection with the ProIndicus transaction, and would pay further kickbacks to Pearse and Singh in connection with the EMATUM loan.

Credit Suisse sent potential investors materials that included the EMATUM loan agreement and marketing materials such as the offering circular (the LPN Investor Documents), notwithstanding the fact that the LPN Investor Documents represented that the loan proceeds would be used exclusively to fund the EMATUM project, and that none of the proceeds would be used to pay bribes or kickbacks. For example, (a) Pearse and Singh knew that they would receive millions of dollars in illegal kickback payments from Privinvest in connection with the EMATUM loan while employed by Credit Suisse;

(b) Firm 1 had expressly warned Credit Suisse about Privinvest and Privinvest Co-Conspirator 1's history of corruption and bribery; and (c) a senior Credit Suisse executive had previously said "no" to Pearse to the combination of Privinvest Co-Conspirator 1 and Mozambique in November 2012.<sup>14</sup>

Despite the use of proceeds concerns raised by the significant valuation shortfall and other previously identified red flags, which underscored the risk that the EMATUM proceeds had been used for corruption and bribery, Credit Suisse approved the EMATUM Exchange. Although Credit Suisse did disclose in investor documents that it had been "widely reported in the press that the proceeds of the [LPNs] had been used in part to purchase defense equipment," and that "subsequent press reports [had] also called into question whether all of the proceeds of the [LPNs] were used for authorized or appropriate purposes," Credit Suisse did not disclose any of the information it had about the significant shortfall between the price Privinvest charged EMATUM for the purchase of assets and the value of those assets. In the EMATUM Exchange documentation, Credit Suisse also: (a) included false and misleading statements regarding the use of proceeds of the original EMATUM loans; (b) failed to disclose kickbacks to Singh, Pearse, and Subeva, of which Singh was aware; (c) did not disclose any of the information Credit Suisse had about the significant shortfall between the price Privinvest charged EMATUM for the 27 boats and the fair market value of those boats; and (d) failed to disclose the existence of the ProIndicus and MAM loans,<sup>15</sup> and their maturity dates, and instead disclosed that Credit Suisse and VTB Bank "have engaged, and may in the future engage, in investment banking and/or commercial banking transactions with, and have performed and continue to perform services for the Issuer and its affiliates in

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<sup>14</sup> The CSSEL Statement of Facts did not identify Privinvest Co-conspirator 1 or Firm 1 other than that Firm 1 was a "diligence firm" used by Credit Suisse.

<sup>15</sup> MAM was a company owned, controlled, and overseen by the Government of Mozambique. MAM was created to build and maintain shipyards.

the ordinary course of business for which they have received and for which they will in the future receive, fees. ... In particular, an affiliate of [CSSEL] has a lending relationship with a wholly-owned state entity whose obligations have the benefit of a guarantee from Mozambique.” Credit Suisse did disclose, however, that it had been “widely reported in the press that the proceeds of the [LPNs] had been used in part to purchase defense equipment,” and that “subsequent press reports [had] also called into question whether all of the proceeds of the [LPNs] were used for authorized or appropriate purposes.”

By agreeing to the EMATUM Exchange, which delayed the EMATUM loan repayment date, Credit Suisse knew that EMATUM loan participation note investors were agreeing to be paid after any other investors in other Mozambique government loans that matured earlier, such as ProIndicus. Credit Suisse arranged and was an investor in the ProIndicus loan. As a result, by extending the EMATUM loan repayment date through the EMATUM Exchange, Credit Suisse would be repaid on its investment in the private ProIndicus loan before EMATUM Securities investors were repaid.

During the investor road show for the EMATUM Exchange, Credit Suisse and Do Rosario and the then-Minister of Finance for Mozambique did not inform investors of (a) the significant valuation shortfall and risk that loan proceeds were improperly diverted, including to pay bribes; (b) the existence or maturity dates of the ProIndicus and MAM loans; (c) that Mozambique had not disclosed its true level of debt to the ProIndicus and MAM loans to the International Monetary Fund (IMF); and (d) kickbacks paid to Credit Suisse bankers in connection with the EMATUM loan.

Under the CSSEL Plea Agreement, CSSEL agreed, among other things, as follows: First, that CSSEL shall cooperate fully with the Offices in any and all matters relating to the conduct described in the CSSEL Plea Agreement and the CSSEL Statement of Facts and other conduct under investigation by the Offices or any other

component of the Department of Justice at any time during the term of the DPA (the Term) until the later of the date upon which all investigations and prosecutions arising out of such conduct are concluded or the end of the Term. Second, at the request of the Offices, CSSEL shall also cooperate fully with other domestic or foreign law enforcement and regulatory authorities and agencies, as well as the Multilateral Development Banks in any investigation of CSSEL, CSG, its affiliates, or any of its present or former officers, directors, employees, agents, and consultants, or any other party, in any and all matters relating to the conduct described in the CSSEL Plea Agreement and the CSSEL Statement of Facts and any other conduct under investigation by the Offices or any other component of the DOJ. Third, should CSSEL learn during the Term of any evidence or allegations of conduct that may constitute a violation of the federal wire fraud statute had the conduct occurred within the jurisdiction of the United States, CSSEL shall promptly report such evidence or allegation to the Offices. CSSEL also agreed to commit no further crimes and to work with Credit Suisse in fulfilling the obligations of CSG's DPA.

#### *Impacted Investors*

The Applicant represented to the Department that the LPNs were distributed from Credit Suisse's UK operations via CSSEL into international capital markets in 2013, to non-U.S. entities, pursuant to U.S. Securities and Exchange Commission (SEC) Regulation S. Credit Suisse is aware that the purchasers of those LPNs were made up of hedge funds, banks, and other institutions, but due to Regulation S, the purchasers' only obligation was to certify their status as Qualified Institutional Buyers (QIBs) in the applicable subscription agreements. The Applicant represents that it is unlikely that Covered Plans were initial purchasers of those LPNs. According to the Applicant, Credit Suisse has no way of knowing, and does not know in any systematic manner, whether (a) the fund owners or investors in the initial purchasers' funds themselves were Covered

Plans, or (b) parties buying and selling the LPNs in the secondary market were Covered Plans.

Furthermore, the Applicant represented that in 2016, LPN investors had the option to exchange their LPNs for sovereign-issued Mozambique Exchange Bonds (the Exchange Bonds) issued under either Regulation S or SEC Rule 144A, in London, England. Credit Suisse represents that it is unlikely that those investors who chose to exchange their LPNs for Regulation S bonds, and who must have been QIBs and non-U.S. entities, were Covered Plans. The 2016 Exchange also included a Rule 144A tranche into which investors could exchange their LPNs; however, those buyers also were required to represent that they were QIBs, and as a result, it is unlikely that their clients were Covered Plans. According to the information on purchasers which Credit Suisse does have, at the time of the Exchange, Credit Suisse was aware that the LPNs, and subsequently, the Eurobonds, were held via either Euroclear or Clearstream accounts in Europe. While Credit Suisse has identified a list of the entities that maintained custodial accounts at Euroclear and Clearstream in connection with those transactions, Credit Suisse represents that it has no way of knowing the identities of the ultimate beneficial owners of the LPNs at the time of the Exchange.

#### *The CSG DPA*

On October 19, 2021, in addition to the CSSEL Plea, the ultimate parent entity of CSSEL, CSG, entered into a three-year DPA with the Offices in connection with the same conduct as set forth in the CSSEL Statement of Facts that forms the basis for the CSSEL Plea Agreement.

The DPA indicates that CSG admits, accepts, and acknowledges that it is responsible under United States law for the acts of its officers, directors, employees, and agents as charged in the CSSEL Information, and as set forth in the CSSEL Statement of

Facts, and that the allegations described in the CSSEL Information and the facts described in the CSSEL Statement of Facts are true and accurate.

Under the DPA, CSG also agreed to continue to cooperate with the Offices, to enhance its compliance program and internal controls, and to provide enhanced reporting to the Offices on CSG's remediation and compliance program. Among other things, the enhanced reporting provisions require CSG to meet with the Offices at least quarterly and to submit yearly reports regarding the status of its remediation efforts, the results of its testing of its compliance program, and its proposals to ensure that its compliance program is reasonably designed, implemented, and enforced so that it is effective in deterring and detecting violations of fraud, money laundering, the Foreign Corrupt Practices Act, and other applicable anti-corruption laws.

Department's Note: Interested persons can access the CSG DPA and related materials at <https://www.justice.gov/opa/pr/credit-suisse-resolves-fraudulent-mozambique-loan-case-547-million-coordinated-global>.

### ***Comments from the Applicant – Requested Revisions***

#### ***I. Revision to Section I(b).***

Section I(b) of the Proposal provides:

The term "Covered Plan" means a plan subject to Part IV of Title I of ERISA (an "ERISA-covered plan") or a plan subject to Code section 4975 (an "IRA"), in each case, with respect to which a CS Affiliated QPAM relies on PTE 84-14, or with respect to which a CS Affiliated QPAM (or any CSAG affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84-14). A Covered Plan does not include an ERISA-covered plan or IRA to the extent the CS Affiliated QPAM has expressly disclaimed reliance on QPAM status or PTE 84-14 in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA.

*Applicant's Request:* The Applicant requested clarification that a disclaimer of reliance on QPAM status or PTE 84-14 may be made in a modification of a contract, arrangement, or agreement with an ERISA-covered plan or IRA, assuming a bilateral signed document exists, and the client is advised in writing what it means not to use the

QPAM Exemption. According to the Applicant, if the agreement is bilateral and in writing, and the client's attention is specifically directed toward the disclaimer, the Applicant is hopeful that the Department will deem these conditions sufficiently protective to permit the CS Affiliated QPAMs to disclaim reliance on QPAM status or PTE 84-14 in a modification of a contract, arrangement, or agreement. Accordingly, the Applicant requested the following additional language be added to the end of Section I(b):

Notwithstanding the above, a CS Affiliated QPAM may disclaim reliance on QPAM status or PTE 84-14 in a written modification of a contract, arrangement, or agreement with an ERISA-covered plan or IRA, where: the modification is made in a bilateral document signed by the client; the client's attention is specifically directed toward the disclaimer; and the client is advised in writing that, with respect to any transaction involving the client's assets, the CS Affiliated QPAM will not represent that it is a QPAM, and will not rely on the relief described in PTE 84-14.

*Department's Response:* The Department has revised the exemption consistent with the Applicant's request.

## *II. Revision to Section III(i)(8).*

Section III(i)(8) of the Proposal provides, in pertinent part:

A copy of the Audit Report must be provided [to] CSAG's Board of Directors and either the Risk Committee or the Audit Committee of CSAG's Board of Directors; and a senior executive officer at either the Risk Committee or the Conduct and Financial Crime Control Committee must review the Audit Report for each CS Affiliated QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report.

*Applicant's Request:* The Applicant requested that the Department permit certification by the Risk Committee or the Audit Committee, rather than the Conduct and Financial Crime Control Committee. As represented by the Applicant, the Audit Committee is uniquely positioned to receive and review the Audit Report, as its specified function is to assist the Board of Directors in fulfilling its oversight role by monitoring and assessing the integrity of Credit Suisse's financial statements. Among the particular responsibilities of the Audit Committee is monitoring the qualifications, independence,



and performance of external auditors such as the Independent Auditor required by the Proposal. The Conduct and Financial Crime Control Committee does not serve a comparable purpose. Its function is solely to manage Credit Suisse's exposure to financial crime risk. The Applicant submitted that the Audit Committee is better suited to fulfill the objectives of the exemption condition. Accordingly, the Applicant requested that the reference to the Conduct and Financial Crime Control Committee be replaced with the Audit Committee. In addition, to the extent that these committees include only independent Board members and not executive employees, the Applicant requested that certification be permitted by the chairperson of the committee or the senior executive officer who acts as liaison with the committee.

*Department's Response:* The Department has revised the exemption consistent with the Applicant's request including so that the chairperson of a committee may provide the certification.

### *III. Revision to Section III(j)(7).*

Section III(j)(7) of the Proposal provides, in relevant part:

For Covered Plans that were provided a previous form of investment management agreement prior to the effective date of this exemption, and sign and return such agreement with a CS Affiliated QPAM within 120 days after the effective date of this exemption, the CS Affiliated QPAM shall provide the documents required by this subsection (j) within ten (10) business days after receipt of the signed agreement. This condition will be deemed met for each Covered Plan that received a notice pursuant to PTE 2019-07 that meets the terms of this condition.

*Applicant's Request:* The Applicant requested clarification with respect to Section III(j)(7), which is intended to deal with new clients of a CS Affiliated QPAM who were provided an investment management agreement shortly before or after the Proposal was published, but in all cases prior to the effective date of the exemption, if granted. The Applicant requests that where that version requires modification to meet the terms of the exemption, the CS Affiliated QPAM may provide amendments required by the exemption that need not be signed, along with the documents required by the exemption.

The Applicant requested that this part of Section III(j)(7) read:

For new Covered Plans that were provided an investment management agreement prior to the effective date of this exemption, returning it within 120 days after the effective date of this exemption, and that signed investment management agreement requires amendment to meet the terms of the exemption, the CS Affiliated QPAM may provide the new Covered Plan with amendments that need not be signed with any documents required by this subsection (j) within ten (10) business days after receipt of the signed agreement. This condition will be deemed met for each Covered Plan that received a notice pursuant to PTE 2019-07 that meets the terms of this condition.

The Applicant states that handling asset management agreements in this manner will save affected plans time and money.

*Department's Response:* The Department has revised the exemption as requested.

#### *IV. Revision to Section III(o).*

Proposed Section III(o) provides “CSAG complies in all material respects with the requirements imposed by a U.S regulatory authority in connection with the Convictions.”

*Applicant's Request:* The Applicant requests that this condition be deleted. The Applicant indicated that a number of regulators have imposed myriad requirements as part of CSAG’s plea agreements and settlements entered into in connection with the Convictions, which are described in detail in the Applicant’s application for exemptive relief (dated October 19, 2021) and the Applicant’s response to the Department’s additional questions (dated December 9, 2021). The Applicant indicated that conditioning an administrative exemption upon CSAG’s compliance with all such requirements does not further the objectives of the exemption and, indeed, could have a significant adverse effect on plans. If CSAG were to fail to meet a minor or ministerial requirement, the exemption would be lost to plans, regardless of whether the regulator chose to deal with the failure in a different, and less draconian, fashion. The Applicant indicated that the CS Affiliated QPAMs have no control over CSAG and cannot ensure its compliance with requirements imposed by other regulators. As stated by the Applicant, the exemption

makes the CS Affiliated QPAMs responsible for their own compliance with the exemption, not for the compliance with all other laws by the rest of Credit Suisse. The Applicant believes that plans and their fiduciaries should not pay the price for any noncompliance by the non-asset management divisions of Credit Suisse.

The Applicant also contends that this kind of provision could have unintended consequences. In support of that contention, the Applicant indicated that: (1) any claim by a disgruntled client or employee, or a competitor, that even the most minor requirements of these ancillary orders were not met may throw the validity of the exemption into doubt, causing disruption to the trading with respect to Covered Plans, and (2) this kind of condition, without notice and hearing, creates the sort of cliff effect that the Department has sought to avoid. Loss, by plans, of this trading exemption for failure by a non-asset management part of Credit Suisse to comply with this condition would serve only to penalize plans for conduct that is outside their managers' control.

The Applicant added that loss of the exemption would be automatic upon CSAG's failure to comply with a regulatory requirement. By contrast, regulators have a broad range of potential responses to a failure by CSAG or a non-asset management affiliate to comply with its terms. Each regulator has mechanisms at its disposal, short of nullifying the terms of the agreement, to ensure CSAG's compliance with requirements imposed by that regulator and to monitor satisfaction of them.

The Applicant further explained that there are also bodies of practice and precedent within other regulatory agencies, which allow for effective but modulated enforcement responses in the event of a putative technical breach, that are inconsistent with the unintentionally severe nature of this proposed QPAM condition. For example, the responsible regulator may elect to enforce an agreement without disturbing the agreement itself – for example, requiring specific performance but leaving the plea agreement or other settlement intact – whereas this QPAM individual exemption would

terminate immediately upon CSAG's failure to comply. In the Applicant's words, such a severe result would not be in the interest of or protective of plans and their participants, and, accordingly, the Applicant requested that the condition be deleted from the final exemption. Alternatively, the Applicant requested that if the Department decides to retain this provision in a final exemption, that it be limited to the conditions of the plea agreement between CSAG and the Department of Justice.

*Department's Response:* The Department is not revising the condition as requested. The Department views CSAG's compliance in all material respects with the requirements imposed by a U.S regulatory authority in connection with the Convictions as indicative of whether CSAG is acting in accordance with U.S-mandated requirements, after years of failing to abide by U.S. laws.

However, given the possible costs to Covered Plans that may arise if the CS Affiliated QPAMs were to suddenly no longer able to rely on PTE 84-14, the Department has revised the proposed language to provide that, "Relief in this exemption will terminate on the date that is six months following the date that a U.S. regulatory authority makes a final decision that CSAG failed to comply in all material respects with any requirement imposed by such regulatory authority in connection with the Convictions.

Importantly, the Department disagrees with the Applicant's characterization that "the exemption makes the CS Affiliated QPAMs responsible for their own compliance with the exemption, not for the compliance with all other laws by the rest of Credit Suisse." This individual exemption is primarily focused on the CS Affiliated QPAMs' compliance with the exemption. The Applicant's statement, however, ignores the broader purpose and scope of Section I(g), which is precisely why this individual exemption is needed. This individual exemption is needed because the Applicant will no longer be able to rely upon PTE 2019-07 or use PTE 84-14 once the CSSEL Conviction occurs. The terms of this exemption, therefore, require full compliance with all of the conditions in

PTE 84-14. Viewed through the lens of PTE 84-14, this exemption does not make CS Affiliated QPAMs responsible for the compliance of the rest of Credit Suisse. Rather, entities that are covered by the scope of Section I(g) must be vigilant regarding their behavior, because it may signal larger issues regarding integrity of all parts of the organization, including its QPAM affiliates or subsidiaries. The conduct of entities in a position of control or influence over a QPAM are explicitly within the scope of Section I(g). For instance, if a QPAM itself were engaged in misconduct or irregularities that a parent entity became aware of, the Department has concerns about the parent's willingness to take appropriate corrective action, particularly in situations where such an entity has failed to do so with respect to other non-QPAM entities. The Department's concern, which prompted the Department to include Section III(o) in the exemption, is consistent with the principle of integrity underpinning Section I(g) and the foundational principles of PTE 84-14.

Although the Department revised this condition slightly as noted above, misconduct on behalf of CSAG or other Credit Suisse entities or failure to comply in all material respects with the requirements imposed by a U.S regulatory authority in connection with the Convictions also would be considered relevant to the Department in connection with any future exemption requests for extended relief from the Applicant related to Section I(g) ineligibility under exemption.

### ***Department's Revisions***

#### ***I. Section II***

In Section II, the Department added a reference to "CS Related QPAMs" which was inadvertently omitted from the exemption text. Relief for the CS Related QPAMs was indicated in the preamble of the Proposal.<sup>16</sup>

#### ***II. Section III(j)(2)***

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<sup>16</sup> See 87 FR 1186 at 1187, 1189, 1192, and 1193.

The Department determined that a minor change is necessary to Section III(j)(2) in order to ensure that Covered Plans are fully and adequately protected under the exemption. Proposed Section I(j)(2) provides that the CS Affiliated QPAM must agree and warrant to Covered Plans:

(2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from a CS Affiliated QPAM's violation of ERISA's fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable; a breach of contract by a CS Affiliated QPAM; or any claim arising out of the failure of such CS Affiliated QPAM to qualify for the exemptive relief provided by PTE 84-14 as a result of a violation of Section I(g) of PTE 84-14 other than the Convictions. This condition applies only to actual losses caused by the CS Affiliated QPAM's violations[.]

The Department replaced the reference to "other than the Convictions" with "other than the CSAG Conviction." Since the CS Affiliated QPAMs are in violation of Section I(g) due to each of the Convictions, this modification is necessary to assist plans and IRAs that wish to withdraw from their arrangement with a CS Affiliated QPAM or recover losses as a result of the second conviction (i.e., the CSSEL Conviction). The Department did not intend to carve out this important protection, which was intentionally included in PTE 2019-07 to protect Plans from costs associated with additional misconduct. The Department also emphasizes that it views actual losses as including losses and related costs arising from unwinding transactions with third parties and from transitioning Plan client assets to an alternative asset manager. The Department also views actual losses as including any exposure on behalf of a QPAM's Plan clients to excise taxes under Code section 4975 as a result of a CS Affiliated QPAM's inability to rely upon the relief in PTE 84-14.

## *II. Section III(k).*

Section III(k) of the Proposal provides, in relevant part:

Within 60 days after the effective date of this one-year exemption, each CS Affiliated QPAM provides notice of the exemption as published in the Federal Register, along with a separate summary describing the facts that led to the Convictions (the Summary), which has been submitted to the

Department, . . . to each sponsor and beneficial owner of a Covered Plan that has entered into a written asset or investment management agreement with a CS Affiliated QPAM, or the sponsor of an investment fund in any case where a CS Affiliated QPAM acts as a sub-adviser to the investment fund in which such ERISA-covered plan and IRA invests.

The Department has removed the reference to “separate.” This notice of exemption includes a description of the facts that led to the Convictions, so the Department determined that a separate Summary is not needed as long as each QPAM prominently references the pages of the *Federal Register* where the Department’s summary resides.

### *III. Section III(s)*

The Department corrected a minor typographical error in Section III(s), which referred to Section I instead of Section III.

### ***Comments from the Applicant – Response to the Department’s Requests for Comment in the Proposal***

In the preamble to the Proposal, the Department sought comments from ERISA-covered plans and IRAs, as well as the Applicant, on a variety of topics. The Applicant provided responses to three of those requests. The first request dealt with the validity and magnitude of the costs and harms to Covered Plans as identified by the Applicant. The second request dealt with whether any additional relief should be limited to an individual exemption that permits the types of transactions permitted by PTE 84-14, but that does not otherwise allow Credit Suisse asset managers to refer to themselves as QPAMs under PTE 84-14 with respect to Covered Plans that become clients following the CSSEL Conviction Date. The third request sought comments from interested persons regarding any other investigations or misconduct (including any alleged misconduct) that Credit Suisse is a party to which may result in criminal prosecution. The Department received no responses from ERISA-covered plans and IRAs. Each heading below provides the Applicant’s response to these comment requests.

#### *I. Validity and Magnitude of Costs and Harms*

The Applicant responded that as set forth in the application for relief, the decision to propose an exemption granting relief will avoid significant harm to plan clients, and their participants and beneficiaries, that may result from such clients being compelled to change managers. According to the Applicant, an adverse decision on the exemption is seen as the Department's vote of no confidence in a manager, and thus effectively denies plans their preferred manager, which in itself is harmful to plans. Unplanned asset manager changes would cause Covered Plan clients to incur significant costs that they otherwise would not incur, and that are substantially in excess of the transaction costs normally associated with transitioning to a different manager. Under normal circumstances (i.e., if Credit Suisse did not lose its individual QPAM exemption), clients have generally not felt compelled to move from Credit Suisse.

In connection with the original exemption issued to the CS Affiliated QPAMs, the Applicant provided the following cost data, which it has reviewed to ensure that those data continue to reflect current market conditions. As of December 2021, CS Affiliated QPAMs manage institutional separate accounts for four plans covered by ERISA. The ERISA Covered Plans account for about \$350 million assets under management. CS Affiliated QPAMs also manage three pooled funds trusted by third parties, which account for an aggregate \$810 million in assets under management that are subject to ERISA.

According to the Applicant, those clients chose CS Affiliated QPAMs and continue to use CS Affiliated QPAMs based on reviews of the Applicant's performance, its legal and compliance structure, and its controls, among other factors. Assuming such clients could find adequate replacement managers, those replacements might not have the comparable depth, experience in all kinds of investment cycles, consistency – for example, the three most senior investment professionals in the Credit strategy discussed below have worked together at Credit Suisse for more than 20 years – or expertise in



these more unusual strategies. Moreover, the costs to those clients of changing managers could be significant, given their chosen strategies with Credit Suisse. Within traditional stock and bond investments, there are hundreds of managers offering similar strategies. In contrast, fewer managers offer the far more specialized strategies pursued by the CS Affiliated QPAMs. Smaller still is the number of managers offering the experience, scale, and performance history of the CS Affiliated QPAMs.

Additionally, selecting a manager typically involves an array of steps. These may include manager searches and circulation of requests for proposals, for which consultants may charge between \$25,000 and \$50,000 for these unique strategies; extended operational investment; due diligence; meetings with portfolio managers and credit analysts; investment committee approvals; establishment of investment guidelines; fee negotiations; establishing appropriate data feeds and operational support; and other contractual negotiations such as for ISDAs and Master Repurchase Agreements. There are legal costs for the plan and for the trustee. Altogether, these steps have taken as long as 18 months for some clients. Thus, it may take a plan sponsor a significant amount of time to find and implement a new manager if it were required to replace Credit Suisse. Its clients have spent considerable time and resources conducting manager searches, and they have selected Credit Suisse. There may also be collateral consequences for the rest of the plan's portfolio: for example, other strategies within the ERISA plan's portfolio may need to be changed to accommodate the loss of these strategies.

The Applicant addressed the specific costs of liquidating four applicable Credit Suisse strategies: Credit, Commodities, Managed Futures, and Multi-Alternative.

#### *Credit Strategy*

According to the Applicant, there could be substantial costs in moving to a new Credit manager, which a fiduciary would typically consider in its evaluation of potentially changing managers. While some new managers might retain certain or even a

majority of the securities selected by Credit Suisse, others would liquidate the portfolio so that they can be judged on their own investment choices. Credit Suisse offers a strategy that is a subset within fixed income relating to senior loans, and the number of managers in that universe is substantially smaller, and smaller still when one looks to the experience and scale of Credit Suisse's business. An average bid/ask in this asset class may be up to 50 basis points. For some unique loans, the spread could approach 250 basis points. Additionally, one cannot overlook the very real possibility that the range and credit quality of the investments in a plan's portfolio with Credit Suisse cannot be replicated with a new manager. In addition, cash settlement times for leveraged loans, the largest portion of the Credit business, can typically be three to four weeks.

#### *Commodities Strategy*

Another strategy that Credit Suisse runs is a diversified commodities index strategy. Investors seek exposure to this asset class as a portfolio diversifier and also use it to potentially hedge against unexpected inflation risk. Credit Suisse has been managing this strategy on behalf of institutional clients since 1994 and is one of the few managers in this space with this amount of experience. Credit Suisse believes that it is one of the top five asset managers in this specific field, measured by assets under management. Within its top five peer group, Credit Suisse offers a highly differentiated investment process, with lower volatility versus its investment benchmarks, and a conservative approach to managing the underlying fixed income collateral. In addition, it offers a highly flexible and customizable platform that its clients may benefit from to optimize their portfolio investments.

According to the Applicant, denying the individual exemption could subject existing ERISA investors to additional expenses if they were to unwind existing assets. Unwinding this strategy would entail all of the legal and other general transition costs

described above in connection with the Credit strategy, plus approximately 6-10 basis points to liquidate investments and reinvest in the new manager's portfolio.

#### *Managed Futures Strategy*

The third strategy is the Managed Futures strategy, which systematically provides exposure to market trends across asset classes, geographies, and time horizons.

Uncorrelated to traditional markets, Managed Futures aims to generate profits during periods when growth-risk-exposed assets decline significantly. This profile makes it potentially a good portfolio diversifier that can help reduce overall portfolio risk and improve performance, especially in stressed market scenarios. The strategy, which has a more than five-year track record, is used as an industry benchmark and consistently ranks as a top performer versus its peers. While Credit Suisse competes with about a dozen investment managers in this strategy, each replicates the index differently, and, thus, changing managers is effectively changing strategies. In addition to the legal and other transition costs, the liquidation costs are about 10 basis points, doubled, of course, to 20 basis points, to deal with reinvestment.

#### *Multi-Alternative Strategy*

The final strategy is the Multi-Alternative strategy, which seeks to generate attractive risk-adjusted returns through an allocation process that combines discretionary insights with systematic investment tools. It invests across a range of asset classes and alternative investment styles. The strategy aims to limit correlation to stocks and bonds, and to manage volatility and drawdown risk. It also strives to maintain a high degree of liquidity and transparency. Cost efficiency may increase the strategy's return potential relative to higher-cost alternative investment options. While Credit Suisse competes with about a dozen investment managers in this strategy, each replicates the index differently, and, thus, as with the Managed Futures strategy, changing managers is effectively

changing strategies. In addition to the legal and other transition costs, the liquidation costs are about 15 basis points, doubled to 30 basis points to deal with reinvestment.

*Department's Note:* The Department's request was intended to solicit actual dollar amounts with respect to the strategies noted above as well as the impacts on ERISA-covered plans and IRAs, as opposed to plans not governed by the prohibited transaction provisions of Title I of ERISA and the Code. While this one-year exemption is intended to avoid unnecessary costs to Covered Plans as a result of an abrupt loss of relief under PTE 84-14, the Department wishes to make clear that specific dollar amounts of such costs, including those associated with exposure to prohibited transactions, must be provided by the Applicant in support of any request for relief beyond the end of this one-year exemption.

## *II. Restricting Credit Suisse asset managers from referring to themselves as QPAMs under PTE 84-14*

The Applicant responded that prohibiting CS Affiliated QPAMs from referring to themselves as QPAMs to prospective Covered Plan clients would defeat the purpose of the exemption and is not in the interest of or protective of such clients. From the Applicant's perspective, the exemption is intended to provide clients access to one of the most advantageous trading exemptions while ensuring that they are insulated from the influence of the bad actors. If the CS Affiliated QPAMs are no longer able to represent that they are QPAMs, Covered Plan clients are far less likely to retain the QPAM as their manager, even if they otherwise would do so. Sophisticated clients know that counterparties will not enter into certain transactions unless the manager can represent both that it is a QPAM, and that PTE 84-14 applies.

According to the Applicant, the language proposed suggests that the CS Affiliated QPAMs could not represent that they were QPAMs in their communications and

representations to counterparties. If that were so, the entire purpose of the exemption – to make trading more efficient and advantageous for Covered Plans – would be thwarted.

The Applicant added that, put differently, the ability to make QPAM representations is critical to the plan fiduciaries' diligence, as reflected in the Requests for Proposals received by the CS Affiliated QPAMs and in plan trading. The Applicant feels certain that the Department would not want to interfere with or hamper the diligence those fiduciaries are required to conduct or undercut the exemption's usefulness to plans.

Representing that a manager is a QPAM means that it meets the definition in Part VI of PTE 84-14 – that is a section 3(38) manager, that it has sufficient net equity, and sufficient assets under management. While a conviction under Section I(g) prevents a CS Affiliated QPAM from using PTE 84-14, under the definition in Section VI, it still is a QPAM. The Applicant indicated that affording the CS Affiliated QPAMs use of PTE 84-14 to facilitate the strategies that are most beneficial to their plan clients, in coordination with the imposition of carefully targeted protective conditions to be assessed by an independent auditor, serves the plans' interests while protecting their participants and beneficiaries.

*Department's Note:* The Applicant appears to misconstrue the larger structure of a prohibited transaction exemption and its continued availability only if the requisite conditions are satisfied. The existence of malfeasance within a corporate family is an important consideration for plan fiduciaries when deciding upon a discretionary asset manager, particularly one calling itself a QPAM and relying upon PTE 84-14. Therefore, the ability of a QPAM and its client plans to continue to rely upon the exemption is directly linked to Section I(g). Regardless of the plan fiduciary's choice to select Credit Suisse as an asset manager, the relief under the exemption is tied to the integrity condition in Section I(g) as a protection not only to plan fiduciaries but to the plan participants whose benefits are ultimately at risk when it appears there may be a

malfeasance and legal compliance problem within an entire corporate family. Section I(g) is an integral part of PTE 84-14 that establishes a level of integrity to justify, in the Applicant's words, the availability of "one of the most advantageous trading exemptions" and the corresponding ability to don the QPAM badge. Any client plan that chooses to retain the QPAM as an asset manager after a loss of relief under PTE 84-14 may do so but would need to proceed under alternative exemptions or otherwise in full compliance with the prohibited transaction provisions under Title I of ERISA and the Code.

Moreover, the Department strongly disagrees that an asset manager's ability to make QPAM representations is critical to the diligence of plan fiduciaries. In granting PTE 84-14, the Department did not intend that an asset manager's ability to rely on PTE 84-14 would constitute a badge of sophistication or expertise. The class exemption does not contain any sophistication or expertise standards or requirements, nor did the Department include any discussion in prior preambles suggesting that was the intent of any of the exemption's conditions.

Rather, the class exemption was intended as an effective and efficient means for an asset manager to engage in a wide range of beneficial plan transactions that are otherwise prohibited by Title I of ERISA and the Code if the conditions of the exemption are met. Plan fiduciaries should not view an asset manager's status as a QPAM and ability to rely upon PTE 84-14 as an endorsement by the Department of that asset manager, an indication that the asset manager is uniquely qualified to manage the plan's assets, that the asset manager will be more likely to act prudently, or that the asset manager is more likely to act with integrity.

Transactional counterparties that require QPAM status do so for their own reasons, including reasons that are unrelated to the interests of and protection of a plan. If a plan fiduciary views an asset manager's status as a QPAM as beneficial to the management of the plan's assets, the fiduciary should strongly consider the asset

manager's ability to comply with, and continue to comply with, the conditions of PTE 84-14 in selecting and/or retaining the QPAM. This includes monitoring the asset manager's ability to comply with Section I(g).

The Department is therefore not persuaded that an exemption which permits transactions that are similar to those covered by PTE 84-14 could not be designed to provide the same efficiencies as PTE 84-14. The Department is also not persuaded that such an approach would be harmful to plans managed by asset managers that do not qualify as QPAMs due to a failure to comply with Section I(g) of the PTE 84-14.

### *III. Investigations or Misconduct (including any Alleged Misconduct)*

According to the Applicant, the third question invites the general public to raise every potential disagreement they may have with any part of the Credit Suisse worldwide organization, regardless of whether the conduct is criminal, whether regulators or courts have already dismissed those claims, whether the claims have even been brought to the attention of the regulator, whether the commenter is correct that the conduct could be criminal, and whether the conduct has anything to do with asset management. The Applicant submits that the granting of the exemption should not depend upon public allegations of wrongdoing, regardless of where in the world it occurred, including outside the separate asset management division and not involving the CS Affiliated QPAMs.

The Applicant indicated that it brought one matter to the attention of the Department in 2019. CSAG has been responding to an investigation by the Swiss Office of the Attorney General ("SOAG") concerning the diligence and controls applied to a historical relationship with Bulgarian former clients who are alleged to have laundered funds through CSAG accounts. On December 17, 2020, the SOAG brought charges against CSAG and other parties under Article 102 of the Swiss Criminal Code. Trial in this matter commenced in the Swiss Federal Criminal Court on February 7, 2022, and was scheduled to conclude on or about March 3, 2022. The Applicant represented that

Article 102 liability is not classified as a felony or a misdemeanor under Swiss law and is outside the scope of section I(g) of PTE 84-14.

The Applicant indicated that other investigations are described in the Applicant's public securities laws disclosures.

*Department's Note:* The Department did not indicate in its request for comment that reporting investigations or misconduct (including any alleged misconduct) in connection with the exemption request would cause the Department to deny the exemption. However, investigations or misconduct founded upon well-verified facts, in particular, are an appropriate consideration for the Department when determining whether to grant any exemption. Such information may require, at a minimum, additional protective conditions to deal with any actual or potential harm to plans and IRAs that cannot be ignored in light of the statutory criteria for granting an exemption under ERISA section 408(a) and Code section 4975(c)(2).

### **GENERAL INFORMATION**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under ERISA section 408(a) and/or Code section 4975(c)(2) does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA section 404, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with ERISA section 404(a)(1)(B); nor does it affect the requirement of Code section 401(a) that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;



(2) Before an exemption may be granted under ERISA section 408(a) and/or Code section 4975(c)(2), the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The exemption is supplemental to, and not in derogation of, any other provisions of ERISA and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The exemption is subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Accordingly, the following exemption is granted under the authority of ERISA section 408(a) and Code section 4975(c)(2) and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011):

### **ONE-YEAR EXEMPTION**

The Department is granting this one-year exemption under the authority of ERISA section 408(a) and Internal Revenue Code (or Code) section 4975(c)(2), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).<sup>17</sup> Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. app. 1 (1996), transferred the authority of

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<sup>17</sup> For purposes of this one-year exemption, references to ERISA section 406, unless otherwise specified, should be read to refer as well to the corresponding provisions of Code section 4975.

the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of exemption is issued solely by the Department.

#### *SECTION I. DEFINITIONS*

(a) The term “Convictions” means (1) the judgment of conviction against CSAG for one count of conspiracy to violate section 7206(2) of the Internal Revenue Code in violation of Title 18, United States Code, Section 371, that was entered in the District Court for the Eastern District of Virginia in Case Number 1:14-cr-188-RBS, on November 21, 2014 (the “CSAG Conviction”); and (2) the judgment of conviction against CSSEL, when it is entered, in Case Number 1:21-cr-00520-WFK (the “CSSEL Conviction”).

(b) The term “Covered Plan” means a plan subject to Part IV of Title I of ERISA (an “ERISA-covered plan”) or a plan subject to Code section 4975 (an “IRA”), in each case, with respect to which a CS Affiliated QPAM relies on PTE 84-14, or with respect to which a CS Affiliated QPAM (or any CSAG affiliate) has expressly represented that the manager qualifies as a QPAM or relies on PTE 84-14. A Covered Plan does not include an ERISA-covered plan or IRA to the extent the CS Affiliated QPAM has expressly disclaimed reliance on QPAM status or PTE 84-14 in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA. Notwithstanding the above, a CS Affiliated QPAM may disclaim reliance on QPAM status or PTE 84-14 in a written modification of a contract, arrangement, or agreement with an ERISA-covered plan or IRA, where: the modification is made in a bilateral document signed by the client; the client's attention is specifically directed toward the disclaimer; and the client is advised in writing that, with respect to any transaction involving the client's assets, the CS Affiliated QPAM will not represent that it is a QPAM, and will not rely on the relief described in PTE 84-14.

(c) The term “CSAG” means Credit Suisse AG.

(d) The term “CSSEL” means Credit Suisse Securities (Europe) Limited.

(e) The term “CS Affiliated QPAM” means Credit Suisse Asset Management, LLC (“CSAM LLC”) and Credit Suisse Asset Management Limited (“CSAM Ltd.”) and any current or future “affiliate” of CSAG or CSSEL (as defined in Part VI(d) of PTE 84–14) that qualifies as a “qualified professional asset manager” (as defined in Section VI(a) of PTE 84-14)<sup>18</sup> and that relies on the relief provided by PTE 84-14 and with respect to which CSAG or CSSEL is a current or future “affiliate” (as defined in Section VI(d) of PTE 84-14), but is not a CS Related QPAM. The term “CS Affiliated QPAM” excludes CSAG and CSSEL.

(f) The term “CS Related QPAM” means any current or future “qualified professional asset manager” (as defined in Section VI(a) of PTE 84-14) that relies on the relief provided by PTE 84-14, and with respect to which CSAG or CSSEL owns a direct or indirect five (5) percent or more interest, but with respect to which CSAG or CSSEL is not an “affiliate” (as defined in section VI(d)(1) of PTE 84-14) The term “CS Related QPAM” excludes CSAG and CSSEL.

(g) The term “Exemption Period” means the one-year period that begins on the date of the CSSEL Conviction.

(h) The term “CSAG Plea Agreement” means the plea agreement entered into between the United States of America, by and through the United States Department of Justice, and the United States Attorney's Office for the Eastern District of Virginia, and CSSEL in Case Number 1:14-cr-188-RBS.

(i) The term “CSSEL Plea Agreement” means the plea agreement entered into between the United States of America, by and through the United States Department of

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<sup>18</sup> In general terms, a QPAM is an independent fiduciary that is a bank, savings and loan association, insurance company, or investment adviser that meets certain equity or net worth requirements and other licensure requirements and that has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

Justice, Criminal Division, Money Laundering and Asset Recovery Section and Fraud Section, and the United States Attorney's Office for the Eastern District of New York, and CSSEL in Case Number 1:21-cr-00520-WFK.

## *SECTION II. COVERED TRANSACTIONS*

The CS Affiliated QPAMs, as defined in Section I(e), and the CS Related QPAMs, as defined in Section I(f), will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84-14 (PTE 84-14)<sup>19</sup> during the Exemption Period, notwithstanding the “Convictions” against CSAG and CSSEL (as defined in Section I(a)), provided that the conditions in Section III are satisfied.

## *SECTION III. CONDITIONS*

(a) The CS Affiliated QPAMs and the CS Related QPAMs (including their officers, directors, agents other than CSG, CSAG, and CSSEL, employees of such QPAMs, and CSAG employees that do work for CS Affiliated or Related QPAMs described in subparagraph (d) below) did not know or did not have reason to know of and did not participate in the criminal conduct of CSAG and CSSEL that is the subject of the Convictions. Further, any other party engaged on behalf of the CS Affiliated QPAMs and CS Related QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not know or have reason to know of and did not participate in the criminal conduct that is the subject of the Convictions. For purposes of this exemption, including paragraph (c) below, “participate in” refers not only to active participation in the criminal conduct of CSAG and CSSEL that is the subject of the Convictions, but also to knowing approval of the criminal conduct, or knowledge of such conduct without taking active steps to prohibit such conduct, including reporting the conduct to the individual’s supervisors, and to the Board of Directors.

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<sup>19</sup> 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430, (Oct. 10, 1985), as amended at 70 FR 49305 (Aug. 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

(b) The CS Affiliated QPAMs and the CS Related QPAMs (including their officers, directors, agents other than CSAG, employees of such QPAMs, and CSAG employees described in subparagraph (d)(3) below) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct of that is the subject of the Convictions. Further, any other party engaged on behalf of the CS Affiliated QPAMs and the CS Related QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct of that is the subject of the subject of the Convictions;

(c) The CS Affiliated QPAMs do not currently and will not in the future employ or knowingly engage any of the individuals who participated in the criminal conduct of CSAG and CSSEL that is the subject of the Convictions;

(d) At all times during the Exemption Period, no CS Affiliated QPAM will use its authority or influence to direct an “investment fund” (as defined in Section VI(b) of PTE 84-14) that is subject to ERISA or the Code and managed by such CS Affiliated QPAM with respect to one or more Covered Plans, to enter into any transaction with CSAG or CSSEL or to engage CSAG or CSSEL to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption. A CS Affiliated QPAM will not fail this condition solely because:

(1) A CSAG affiliate serves as a local sub-custodian that is selected by an unaffiliated global custodian that, in turn, is selected by someone other than a CS Affiliated QPAM or CS Related QPAM;

(2) CSAG provides only necessary, non-investment, non-fiduciary services that support the operations of CS Affiliated QPAMs, at the CS Affiliated QPAM’s own

expense, and the Covered Plan is not required to pay any additional fee beyond its agreed-to asset management fee. This exception does not permit CSAG or its branches to provide any service to an investment fund managed by a CS Affiliated QPAM or CS Related QPAM; or

(3) CSAG employees are double-hatted, seconded, supervised, or subject to the control of a CS Affiliated QPAM;

(e) Any failure of a CS Affiliated QPAM to satisfy Section I(g) of PTE 84-14 arose solely from the Convictions;

(f) A CS Affiliated QPAM or a CS Related QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an “ERISA-covered plan”) or Code section 4975 (an “IRA”) in a manner that it knew or should have known would further the criminal conduct that is the subject of the Convictions; or cause the CS Affiliated QPAM or CS Related QPAM or its affiliates to directly or indirectly profit from the criminal conduct that is the subject of the Convictions;

(g) Neither CSAG nor CSSEL will act as a fiduciary within the meaning of ERISA section 3(21)(A)(i) or (iii), or Code section 4975(e)(3)(A) and (C), with respect to ERISA-covered Plan and IRA assets, except that each may act as such a fiduciary (1) with respect to employee benefit plans sponsored for its own employees or employees of an affiliate; or (2) in connection with securities lending services of the New York Branch of CSAG. Neither CSAG nor CSSEL will be treated as violating the conditions of the exemption solely because it acted as an investment advice fiduciary within the meaning of ERISA section 3(21)(A)(ii) or Code section 4975(e)(3)(B);

(h)(1) Each CS Affiliated QPAM must maintain, adjust (to the extent necessary), implement, and follow the written policies and procedures described below (the Policies). Notwithstanding the preceding sentence, a CS Affiliated QPAM may not engage in any transaction or arrangement described in Section III(d)(1) through (3) of this exemption

before the date the Policies below have been developed, implemented, and followed. The Policies must require and must be reasonably designed to ensure that:

(i) The asset management decisions of the CS Affiliated QPAM are conducted independently of CSAG's and CSSEL's corporate management and business activities, and without considering any fee a CS-related local sub-custodian may receive from those decisions. This condition does not preclude a CS Affiliated QPAM from receiving publicly available research and other widely available information from a CSAG affiliate other than CSSEL;

(ii) The CS Affiliated QPAM fully complies with ERISA's fiduciary duties, and with ERISA and the Code's prohibited transaction provisions, in each case as applicable with respect to each Covered Plan, and does not knowingly participate in any violation of these duties and provisions with respect to Covered Plans;

(iii) The CS Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans;

(iv) Any filings or statements made by the CS Affiliated QPAM to regulators, including but not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of or in relation to Covered Plans, are materially accurate and complete, to the best of such QPAM's knowledge at that time;

(v) To the best of its knowledge at that time, the CS Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to Covered Plans, or make material misrepresentations or omit material information in its communications with Covered Plans; and

(vi) The CS Affiliated QPAM complies with the terms of this one-year exemption, and CSAG complies with the terms of Section III(d)(2);

(2) Any violation of, or failure to comply with an item in subparagraphs (h)(1)(ii) through (vi), is corrected as soon as reasonably possible upon discovery, or as soon after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and any such violation or compliance failure not so corrected is reported, upon the discovery of such failure to so correct, in writing. This report must be made to the head of compliance and the general counsel (or their functional equivalent) of the relevant CS Affiliated QPAM that engaged in the violation or failure, and the independent auditor responsible for reviewing compliance with the Policies. A CS Affiliated QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance as soon as reasonably possible upon discovery, or as soon as reasonably possible after the CS Affiliated QPAM reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (2);

(3) Each CS Affiliated QPAM must maintain, adjust (to the extent necessary), and implement or continue a program of training during the Exemption Period (the Training), to be conducted at least annually, for all relevant CS Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must:

(i) At a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this exemption (including any loss of exemptive relief provided herein), and the requirement for prompt reporting of wrongdoing; and

(ii) Be conducted by a professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code to perform the tasks required by this exemption; and



(iii) Be conducted in-person, electronically, or via a website;

(i)(1) Each CS Affiliated QPAM submits to an audit by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and each CS Affiliated QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. The audit must cover the 12-month period that begins on November 21, 2021. The audit must be completed no later than 180 days after the period to which it applies (May 19, 2023);

(2) Within the scope of the audit and to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and only to the extent such disclosure is not prevented by state or federal statute, or involves communications subject to attorney client privilege, each CS Affiliated QPAM and, if applicable, CSAG, will grant the auditor unconditional access to its business, including, but not limited to: its computer systems; business records; transactional data; workplace locations; training materials; and personnel. Such access is limited to information relevant to the auditor's objectives as specified by the terms of this exemption;

(3) The auditor's engagement must specifically require the auditor to determine whether each CS Affiliated QPAM has developed, implemented, maintained, and followed the Policies in accordance with the conditions of this one-year exemption, and has developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test each CS Affiliated QPAM's operational compliance with the Policies and Training. In this regard, the auditor must test, for each CS Affiliated QPAM, a sample of such: (1) CS Affiliated QPAM's transactions involving Covered Plans; (2) each CS Affiliated QPAM's transactions involving CSAG affiliates that serve as a local sub-custodian. The samples

must be sufficient in size and nature to afford the auditor a reasonable basis to determine such CS Affiliated QPAM's operational compliance with the Policies and Training;

(5) For each audit, on or before the end of the relevant period described in Section III(i)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to CSAG and the CS Affiliated QPAM to which the audit applies that describes the procedures performed by the auditor in connection with its examination. The auditor, at its discretion, may issue a single consolidated Audit Report that covers all the CS Affiliated QPAMs. The Audit Report must include the auditor's specific determinations regarding:

(i) The adequacy of each CS Affiliated QPAM's Policies and Training; each CS Affiliated QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective CS Affiliated QPAM's noncompliance with the written Policies and Training described in Section III(h) above. The CS Affiliated QPAM must promptly address any noncompliance. The CS Affiliated QPAM must promptly address or prepare a written plan of action to address any determination as to the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective CS Affiliated QPAM. Any action taken or the plan of action to be taken by the respective CS Affiliated QPAM must be included in an addendum to the Audit Report (such addendum must be completed prior to the certification described in Section III(i)(7) below). In the event such a plan of action to address the auditor's recommendation regarding the adequacy of the Policies and Training is not completed by the time of submission of the Audit Report, the following period's Audit Report must state whether the plan was satisfactorily completed. Any determination by the auditor that a CS Affiliated QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence

indicating noncompliance. In this last regard, any finding that a CS Affiliated QPAM has complied with the requirements under this subparagraph must be based on evidence that the particular CS Affiliated QPAM has actually implemented, maintained, and followed the Policies and Training required by this exemption. Furthermore, the auditor must not solely rely on the Annual Exemption Report created by the Compliance Officer, as described in Section III(m) below, as the basis for the auditor's conclusions in lieu of independent determinations and testing performed by the auditor as required by Section III(i)(3) and (4) above; and

(ii) The adequacy of the Exemption Review described in Section III(m);

(6) The auditor must notify the respective CS Affiliated QPAM of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to the Audit Report, the general counsel, or one of the three most senior executive officers of the CS Affiliated QPAM to which the Audit Report applies, must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption; that, to the best of such officer's knowledge at the time, the CS Affiliated QPAM has addressed, corrected, and remedied any noncompliance and inadequacy or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. This certification must also include the signatory's determination that, to the best of the officer's knowledge at the time, the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption, and with the applicable provisions of ERISA and the Code. Notwithstanding the above, no person, including any person referenced in the CSAG or CSSEL Statement of Facts that gave rise to the CSAG or CSSEL Plea Agreement, who knew of, or should have known of, or participated in, any misconduct

described in the CSAG or CSSEL Statement of Facts, by any party, may provide the certification required by this exemption, unless the person took active documented steps to stop the misconduct;

(8) A copy of the Audit Report must be provided to CSAG's Board of Directors and either the Risk Committee or the Audit Committee of CSAG's Board of Directors; and a senior executive officer or chairperson of either the Risk Committee or the Audit Committee must review the Audit Report for each CS Affiliated QPAM and must certify in writing, under penalty of perjury, that such person has reviewed each Audit Report;

(9) Each CS Affiliated QPAM provides its certified Audit Report, by regular mail to: Office of Exemption Determinations (OED), 200 Constitution Avenue NW, Suite 400, Washington, DC 20210, or by private carrier to: 122 C Street NW, Suite 400, Washington, DC 20001-2109. The delivery must take place no later than 45 days following completion of the Audit Report. The Audit Report will be made part of the public record regarding this one-year exemption. Furthermore, each CS Affiliated QPAM must make its Audit Reports unconditionally available, electronically or otherwise, for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

(10) Any engagement agreement with an auditor to perform the audit required by this exemption must be submitted to OED no later than two (2) months after the execution of such agreement;

(11) The auditor must provide the Department, upon request, for inspection and review, access to all the workpapers created and used in connection with the audit, provided such access, inspection, and review is otherwise permitted by law; and

(12) CSAG and/or the CS Affiliated QPAM must notify the Department of a change in the independent auditor no later than two (2) months after the engagement of a

substitute or subsequent auditor and must provide an explanation for the substitution or change including a description of any material disputes involving the terminated auditor and CSAG and/or the CS Affiliated QPAMs;

(j) As of the effective date of this one-year exemption, with respect to any arrangement, agreement, or contract between a CS Affiliated QPAM and a Covered Plan, the CS Affiliated QPAM agrees and warrants to Covered Plans:

(1) To comply with ERISA and the Code, as applicable with respect to such Covered Plan; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any prohibited transactions); and to comply with the standards of prudence and loyalty set forth in ERISA section 404 with respect to each such ERISA-covered plan and IRA to the extent that ERISA section 404 is applicable;

(2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from a CS Affiliated QPAM's violation of ERISA's fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable; a breach of contract by a CS Affiliated QPAM; or any claim arising out of the failure of such CS Affiliated QPAM to qualify for the exemptive relief provided by PTE 84-14 as a result of a violation of Section I(g) of PTE 84-14 other than the CSAG Conviction. This condition applies only to actual losses caused by the CS Affiliated QPAM's violations;

(3) Not to require (or otherwise cause) the Covered Plan to waive, limit, or qualify the liability of the CS Affiliated QPAM for violating ERISA or the Code for engaging in prohibited transactions;

(4) Not to restrict the ability of the Covered Plan to terminate or withdraw from its arrangement with the CS Affiliated QPAM, with respect to any investment in a separately-managed account or pooled fund subject to ERISA and managed by such CS Affiliated QPAM, with the exception of reasonable restrictions, appropriately disclosed

in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any such arrangement involving investments in pooled funds subject to ERISA entered into after the effective date of this exemption, the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming an ERISA-covered plan's or IRA's investment, and such restrictions must be applicable to all such investors and be effective no longer than reasonably necessary to avoid the adverse consequences;

(5) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally-recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in a like manner to all such investors;

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the CS Affiliated QPAMs for a violation of such agreement's terms. To the extent consistent with ERISA section 410, however, this provision does not prohibit disclaimers for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of CSAG and its affiliates, or damages arising from acts outside the control of the CS Affiliated QPAM; and

(7) Within 120 days after the effective date of this one-year exemption, each CS Affiliated QPAM must provide a notice of its obligations under this Section III(j) to each Covered Plan. For prospective Covered Plans that enter into a written asset or investment

management agreement with a CS Affiliated QPAM on or after a date that is 120 days after the effective date of this exemption, the CS Affiliated QPAM must agree to its obligations under this Section III(j) in an updated investment management agreement between the CS Affiliated QPAM and such clients or other written contractual agreement. Notwithstanding the above, a CS Affiliated QPAM will not violate the condition solely because a Covered Plan refuses to sign an updated investment management agreement. For new Covered Plans that were provided an investment management agreement prior to the effective date of this exemption, returning it within 120 days after the effective date of this exemption, and that signed investment management agreement requires amendment to meet the terms of the exemption, the CS Affiliated QPAM may provide the new Covered Plan with amendments that need not be signed with any documents required by this subsection (j) within ten (10) business days after receipt of the signed agreement. This condition will be deemed met for each Covered Plan that received a notice pursuant to PTE 2019-07 that meets the terms of this condition.

(k) Within 60 days after the effective date of this one-year exemption, each CS Affiliated QPAM provides notice of the exemption as published in the *Federal Register*, along with a summary describing the facts that led to the Convictions (the Summary), which has been submitted to the Department, and a prominently displayed statement (the Statement) that the Convictions result in a failure to meet a condition in PTE 84-14 and the CSSEL Conviction results in a failure to meet a condition in PTE 2019-07, to each sponsor and beneficial owner of a Covered Plan that has entered into a written asset or investment management agreement with a CS Affiliated QPAM, or the sponsor of an investment fund in any case where a CS Affiliated QPAM acts as a sub-adviser to the investment fund in which such ERISA-covered plan and IRA invests. All prospective Covered Plan clients that enter into a written asset or investment management agreement

with a CS Affiliated QPAM after a date that is 60 days after the effective date of this exemption must receive a copy of the notice of the exemption, the Summary, and the Statement before, or contemporaneously with, the Covered Plan's receipt of a written asset or investment management agreement from the CS Affiliated QPAM. The notices may be delivered electronically (including by an email that has a link to the one-year exemption).

(l) The CS Affiliated QPAM must comply with each condition of PTE 84-14, as amended, with the sole exception of the violation of Section I(g) of PTE 84-14 that is attributable to the Convictions. If, during the Exemption Period, an entity within the Credit Suisse corporate structure is convicted of a crime described in Section I(g) of PTE 84-14 (other than the Convictions), relief in this exemption would terminate immediately;

(m)(1) Within 60 days after the effective date of this exemption, each CS Affiliated QPAM must designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. For purposes of this condition (m), each relevant line of business within a CS Affiliated QPAM may designate its own Compliance Officer(s).

Notwithstanding the above, no person, including any person referenced in the CSAG or CSSEL Statement of Facts that gave rise to the CSAG or CSSEL Plea Agreement, who knew of, or should have known of, or participated in, any misconduct described in the CSAG or CSSEL Statement of Facts, by any party, may be involved with the designation or responsibilities required by this condition, unless the person took active documented steps to stop the misconduct. The Compliance Officer must conduct a review of each twelve-month period of the Exemption Period (the Exemption Review), to determine the adequacy and effectiveness of the implementation of the Policies and Training. With respect to the Compliance Officer, the following conditions must be met:



(i) The Compliance Officer must be a professional who has extensive experience with, and knowledge of, the regulation of financial services and products, including under ERISA and the Code; and

(ii) The Compliance Officer must have a direct reporting line to the highest-ranking corporate officer in charge of compliance for the applicable CS Affiliated QPAM.

(2) With respect to the Exemption Review, the following conditions must be met:

(i) The Annual Exemption Review includes a review of the CS Affiliated QPAM's compliance with and effectiveness of the Policies and Training and of the following: any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the compliance and risk control function (or its equivalent) during the previous year; the most recent Audit Report issued pursuant to this exemption or PTE 2019-07; any material change in the relevant business activities of the CS Affiliated QPAMs; and any change to ERISA, the Code, or regulations related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of the CS Affiliated QPAMs;

(ii) The Compliance Officer prepares a written report for the Exemption Review (an Exemption Report) that (A) summarizes his or her material activities during the prior year; (B) sets forth any instance of noncompliance discovered during the prior year, and any related corrective action; (C) details any change to the Policies or Training to guard against any similar instance of noncompliance occurring again; and (D) makes recommendations, as necessary, for additional training, procedures, monitoring, or additional and/or changed processes or systems, and management's actions on such recommendations;

(iii) In the Exemption Report, the Compliance Officer must certify in writing that to the best of his or her knowledge at the time: (A) the report is accurate; (B) the Policies

and Training are working in a manner which is reasonably designed to ensure that the Policies and Training requirements described herein are met; (C) any known instance of noncompliance during the prior year and any related correction taken to date have been identified in the Exemption Report; and (D) the CS Affiliated QPAMs have complied with the Policies and Training, and/or corrected (or are correcting) any known instances of noncompliance in accordance with Section III(h) above;

(iv) The Exemption Report must be provided to appropriate corporate officers of CSAG and to each CS Affiliated QPAM to which such report relates, and to the head of compliance and the general counsel (or their functional equivalent) of CSAG and the relevant CS Affiliated QPAM; and the report must be made unconditionally available to the independent auditor described in Section III(i) above;

(v) The Exemption Review, including the Compliance Officer's written Annual Exemption Report, must cover the twelve-month period beginning on November 21, 2021. The Annual Review, including the Compliance Officer's written Report, must be completed within three (3) months following the end of the period to which it relates;

(n) CSAG imposes its internal procedures, controls, and protocols on CSAG and CSSEL to reduce the likelihood of any recurrence of conduct that is the subject of the Convictions;

(o) Relief in this exemption will terminate on the date that is six months following the date that a U.S. regulatory authority makes a final decision that CSAG failed to comply in all material respects with any requirement imposed by such regulatory authority in connection with the Convictions;

(p) Each CS Affiliated QPAM will maintain records necessary to demonstrate that the conditions of this exemption have been met for six (6) years following the date of any transaction for which the CS Affiliated QPAM relies upon the relief in this exemption;

(q) During the Exemption Period, CSAG must: (1) immediately disclose to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) with the U.S. Department of Justice, entered into by Credit Suisse Group AG or CSAG or any of its affiliates (as defined in Section VI(d) of PTE 84-14) in connection with conduct described in Section I(g) of PTE 84-14 or section 411 of ERISA; and (2) immediately provide the Department with any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement;

(r) Within 60 days after the effective date of this exemption, each CS Affiliated QPAM, in its agreements with, or in other written disclosures provided to Covered Plans, will clearly and prominently inform Covered Plan clients of their right to obtain a copy of the Policies or a description (Summary Policies) which accurately summarizes key components of the CS Affiliated QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within six (6) months following the end of the calendar year during which the Policies were changed.<sup>20</sup> With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or Summary Policies is clearly and prominently disclosed to each Covered Plan;

(s) A CS Affiliated QPAM will not fail to meet the terms of this one-year exemption solely because a different CS Affiliated QPAM fails to satisfy a condition for relief described in Section III(c), (d), (h), (i), (j), (k), (l), (p) or (r); or if the independent auditor described in Section III(i) fails to comply with a provision of the exemption other

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<sup>20</sup> If the Applicant meets this disclosure requirement through Summary Policies, changes to the Policies shall not result in the requirement for a new disclosure unless, as a result of changes to the Policies, the Summary Policies are no longer accurate.

than the requirement described in Section III(i)(11), provided that such failure did not result from any actions or inactions of CSAG or its affiliates; and

(t) All the material facts and representations set forth in the Summary of Facts and Representations are true and accurate.

*Effective Date:* This exemption will be in effect for one (1) year, beginning on the date of the CSSEL Conviction.

Signed at Washington, DC.

**Timothy P. Hauser,**  
*Deputy Assistant Secretary for Program Operations,*  
*Employee Benefits Security Administration,*  
*U.S. Department of Labor.*

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